IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11637 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAIDEVPRASAD GOVINDLAL UPADHYAY

Versus

DIVISIONAL CONTROLLER

Appearance:

1. Special Civil Application No. 11637 of 2000

MR MS MANSURI for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/10/2001

ORAL JUDGEMENT

#. Since the matter has been admitted, with the consent of the parties, the matter is taken up for final hearing today.

#. The petitioner has raised the industrial dispute which was numbered as Reference (LCV) No.447 of 1986. In this petition, this Court is not concerned with the details. Suffice it to say that, by award dated 29.5.1990 the reference was allowed and the concerned workman was ordered to be reinstated in service with continuity of service. It is not in dispute that the concerned workman thereafter was reinstated in service and now he has retired from service. However, the petitioner has not been paid the benefit of gratuity, pension, provident fund etc. by not treating the intervening period as in service. It is also not in dispute that the petitioner was made permanent in 1983 and to be precise from January, 1983 he was given the status of permanency and from that date he was entitled to all the benefits including the benefit of periodical increments etc. However, in my view, once there is an order of continuity of service passed by the Labour Court, it is presumed that the petitioner was in actual service from 1983 onwards.

#. Mr.Munshaw, learned advocate, for the S.T.Corporation argued that since the petitioner was not in actual service at the relevant time, he was not given any benefit of increments in view of the policy of the Corporation.

#. However, in my view, once there is an order of reinstatement with continuity of service passed by the Labour Court, the petitioner is entitled to all the benefits including the periodical increments and his service is required to be considered for all the purpose including the retiral benefits. The action of the Corporation is, therefore, not proper by which the petitioner has been denied the said benefit.

#. It is declared that the petitioner is entitled to the benefit of Provident Fund, Gratuity and other retiral benefits treating him to be continued in service as regular employee from January, 1983. It is also clarified that, if there is any short fall of any period for the purpose of pension or for any other retiral benefits, the Corporation may also consider to condone the break if any and as per the Rules treating the petitioner to be continued in service from January 1983. The petitioner will be entitled to all such benefits from January, 1983 till he actually retired by way of superannuation. The Corporation is, therefore, directed to calculate the aforesaid benefits which are required to

be paid to the petitioner as stated above and whatever benefit is required to be given to the petitioner, should be given to him within two months from today. The petition is, therefore, allowed. Rule is made absolute with no order as to costs. The petitioner may take direct service of this order for the purpose of bringing this order to the notice of the Corporation so that there may not be any further delay in the matter especially when the petitioner has retired since long.

(P.B.Majmudar,J)
(pathan)